

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

-against-

MEDICAL MARIJUANA, INC., DIXIE ELIXIRS
AND EDIBLES, RED DICE HOLDINGS, LLC,
and DIXIE BOTANICALS,

Defendants.

Civil Action No. 15-cv-701-G

**ANSWER AND AFFIRMATIVE
DEFENSES**

Defendant Dixie Elixirs (“Dixie”), by their respective undersigned counsel, state as follows, upon information and belief:

PRELIMINARY STATEMENT

1. Defendant denies all of the allegations contained within Paragraph 1 of the Plaintiffs’ Complaint.

JURISDICTION AND PARTIES

2. Defendant denies all of the allegations contained within Paragraph 2 of the Plaintiffs’ Complaint.

3. Defendant denies all of the allegations contained within Paragraph 3 of the Plaintiffs’ Complaint.

4. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 of the Complaint.

5. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 of the Complaint.

6. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 of the Complaint.

7. Defendant denies the allegations contained within Paragraph 7 of the Plaintiffs' Complaint, except admits that Defendant is a Colorado Limited Liability Company with a principal place of business located at 4990 Oakland Street, Denver, CO 80209, United States.

8. Defendant denies all of the allegations contained within Paragraph 10 of the Plaintiffs' Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 9 of the Complaint.

10. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 10 of the Complaint.

11. Defendant denies all of the allegations contained within Paragraph 11 of the Plaintiffs' Complaint.

SPECIFIC FACTS AS TO PLAINTIFFS

12. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 12 of the Complaint.

13. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 13 of the Complaint.

14. Defendant denies all of the allegations contained within Paragraph 14 of the Plaintiffs' Complaint.

15. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 15 of the Complaint.

16. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 16 of the Complaint.

17. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 17 of the Complaint.

18. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 18 of the Complaint.

19. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 19 of the Complaint.

20. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 20 of the Complaint.

21. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 21 of the Complaint.

GENERAL FACTS AND ALLEGATIONS AS TO ALL CAUSES OF ACTION

22. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 22 of the Complaint.

23. Defendant denies all of the allegations contained within Paragraph 23 of the Plaintiffs' Complaint.

24. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 24 of the Complaint.

25. Defendant denies all of the allegations contained within Paragraph 25 of the Plaintiffs' Complaint.

26. Defendant denies all of the allegations contained within Paragraph 26 of the Plaintiffs' Complaint.

27. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 27 of the Complaint.

28. Defendant denies all of the allegations contained within Paragraph 28 of the Plaintiffs' Complaint.

29. Defendant denies all of the allegations contained within Paragraph 29 of the Plaintiffs' Complaint.

30. Defendant denies all of the allegations contained within Paragraph 30 of the Plaintiffs' Complaint.

31. Defendant denies all of the allegations contained within Paragraph 31 of the Plaintiffs' Complaint.

32. Defendant denies all of the allegations contained within Paragraph 32 of the Plaintiffs' Complaint.

COUNT I

33. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

34. Defendant denies all of the allegations contained within Paragraph 34 of the Plaintiffs' Complaint.

35. Defendant denies all of the allegations contained within Paragraph 35 of the Plaintiffs' Complaint.

36. Defendant denies all of the allegations contained within Paragraph 36 of the Plaintiffs' Complaint.

37. Defendant denies all of the allegations contained within Paragraph 37 of the Plaintiffs' Complaint.

38. Defendant denies all of the allegations contained within Paragraph 38 of the Plaintiffs' Complaint.

39. Defendant denies all of the allegations contained within Paragraph 39 of the Plaintiffs' Complaint.

40. Defendant denies all of the allegations contained within Paragraph 40 of the Plaintiffs' Complaint.

41. Defendant denies all of the allegations contained within Paragraph 41 of the Plaintiffs' Complaint.

COUNT II

42. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

43. Defendant denies all of the allegations contained within Paragraph 43 of the Plaintiffs' Complaint.

44. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 44 of the Complaint.

45. Defendant denies all of the allegations contained within Paragraph 45 of the Plaintiffs' Complaint.

46. Defendant denies all of the allegations contained within Paragraph 46 of the Plaintiffs' Complaint.

47. Defendant denies all of the allegations contained within Paragraph 47 of the Plaintiffs' Complaint.

COUNT III

48. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

49. Paragraph 49 of the Complaint makes no allegations to which a response is required. To the extent that allegations are presented in Paragraph 49, Defendant denies them in their entirety.

50. Defendant denies all of the allegations contained within Paragraph 50 of the Plaintiffs' Complaint.

51. Defendant denies all of the allegations contained within Paragraph 51 of the Plaintiffs' Complaint.

52. Defendant denies all of the allegations contained within Paragraph 52 of the Plaintiffs' Complaint.

53. Defendant denies all of the allegations contained within Paragraph 53 of the Plaintiffs' Complaint.

54. Defendant denies all of the allegations contained within Paragraph 54 of the Plaintiffs' Complaint.

55. Defendant denies all of the allegations contained within Paragraph 55 of the Plaintiffs' Complaint.

COUNT IV

56. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

57. Defendant denies all of the allegations contained within Paragraph 57 of the Plaintiffs' Complaint.

58. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 58 of the Complaint.

59. Defendant denies all of the allegations contained within Paragraph 59 of the Plaintiffs' Complaint.

COUNT V

60. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

61. Defendant denies all of the allegations contained within Paragraph 61 of the Plaintiffs' Complaint.

62. Defendant denies all of the allegations contained within Paragraph 62 of the Plaintiffs' Complaint.

63. Defendant denies all of the allegations contained within Paragraph 63 of the Plaintiffs' Complaint.

64. Defendant denies all of the allegations contained within Paragraph 64 of the Plaintiffs' Complaint.

COUNT VI

65. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

66. Defendant denies all of the allegations contained within Paragraph 66 of the Plaintiffs' Complaint.

67. Defendant denies all of the allegations contained within Paragraph 67 of the Plaintiffs' Complaint.

68. Defendant denies all of the allegations contained within Paragraph 68 of the Plaintiffs' Complaint.

69. Defendant denies all of the allegations contained within Paragraph 69 of the Plaintiffs' Complaint.

70. Defendant denies all of the allegations contained within Paragraph 70 of the Plaintiffs' Complaint.

COUNT VII

71. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

72. Paragraph 72 of the Complaint makes no allegations to which a response is required. To the extent that allegations are presented in Paragraph 72, Defendant denies them in their entirety.

73. Defendant denies all of the allegations contained within Paragraph 73 of the Plaintiffs' Complaint.

74. Defendant denies all of the allegations contained within Paragraph 74 of the Plaintiffs' Complaint.

75. Defendant denies all of the allegations contained within Paragraph 75 of the Plaintiffs' Complaint.

COUNT VIII

76. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

77. Defendant denies all of the allegations contained within Paragraph 77 of the Plaintiffs' Complaint.

78. Defendant denies all of the allegations contained within Paragraph 78 of the Plaintiffs' Complaint.

79. Defendant denies all of the allegations contained within Paragraph 79 of the Plaintiffs' Complaint.

80. Defendant denies all of the allegations contained within Paragraph 80 of the Plaintiffs' Complaint.

81. Defendant denies all of the allegations contained within Paragraph 81 of the Plaintiffs' Complaint.

COUNT IX

82. Defendant repeats and realleges each and every allegation, response, denial and denial of information and knowledge as set forth in its Answer to the Plaintiffs' Complaint contained in the prior Paragraphs of this Answer as if heretofore set out at length.

83. Defendant denies all of the allegations contained within Paragraph 83 of the Plaintiffs' Complaint.

84. Defendant denies all of the allegations contained within Paragraph 84 of the Plaintiffs' Complaint.

85. Defendant denies all of the allegations contained within Paragraph 85 of the Plaintiffs' Complaint.

86. Defendant denies all of the allegations contained within Paragraph 86 of the Plaintiffs' Complaint.

87. Defendant denies all of the allegations contained within Paragraph 87 of the Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

As and for a First Affirmative Defense:

88. Plaintiff failed to initiate suit within the applicable statute of limitations period.

As and for a Second Affirmative Defense:

89. This court lacks personal jurisdiction over answering Defendant.

As and for a Third Affirmative Defense:

90. This court lacks subject matter jurisdiction over this dispute.

As and for a Fourth Affirmative Defense:

91. The Complaint fails to state a claim against answering Defendant on which relief can be granted.

As and for a Fifth Affirmative Defense:

92. Plaintiff failed to mitigate the damages alleged in the Complaint, even though Plaintiff had the opportunity and means of doing so. In asserting this affirmative defense, Defendant does not admit liability for damages due to the Plaintiff's injury alleged in the Complaint, nor does Defendant admit that such damages exist.

As and for a Sixth Affirmative Defense:

93. Plaintiff's culpable conduct contributed to the alleged damages, which are denied, by knowing and intentional assumption of the risks inherent in the activities described in the Complaint, and as such Plaintiff is barred from recovery in this action.

As and for a Seventh Affirmative Defense:

94. Any injuries that may have been sustained by Plaintiff, as alleged in its Complaint, occurred as a direct result of Plaintiff's own negligent conduct, and not by any conduct of answering Defendant, and as such Plaintiff is barred from recovery in this action.

As and for an Eighth Affirmative Defense

95. Any damages sustained by Plaintiff, as alleged in the Complaint, were proximately, directly, and solely caused by the negligent acts of third persons over whom answering Defendant had and have no direction or control.

As and for a Ninth Affirmative Defense

96. Any contract in this matter is void because it was devised to achieve a purpose that is illegal under statute or common law.

As and for an Tenth Affirmative Defense

97. Each cause of action in the Complaint is barred to the extent that Plaintiff consented to any of the alleged activity or conduct.

As and for an Eleventh Affirmative Defense

98. Plaintiff's injuries do not arise out of any of the predicate acts that may give rise to liability under the Racketeer Influenced and Corrupt Organizations Act as defined by 18 U.S.C. §1961(1), and Plaintiff is therefore without standing.

As and for a Twelfth Affirmative Defense

99. Plaintiff's Complaint contains injuries that are speculative and therefore not actionable under the Racketeer Influenced and Corrupt Organizations Act.

As and for a Thirteenth Affirmative Defense

100. Any alleged conduct on the part of answering Defendant was undertaken in good faith for legitimate business purposes.

As and for a Fourteenth Affirmative Defense

101. Plaintiff's recovery is limited or barred by express or implied warranties.

As and for a Fifteenth Affirmative Defense

102. Plaintiff and answering Defendant were not parties to the contract for the purchase of the product at issue and therefore had no contractual relationship.

As and for a Sixteenth Affirmative Defense

103. Answering Defendant performed all contractual obligations other than those which were prevented or excused, if any, and therefore did not breach the agreement.

As and for a Seventeenth Affirmative Defense

104. Any written agreement between the parties was intended to be the full agreement between the parties, and the Plaintiff cannot present any evidence not in writing to establish or alter the terms of the agreement.

WHEREFORE, Defendants respectfully demand judgment denying all relief sought by Plaintiff and dismissing the Complaint in its entirety, awarding Defendant costs, disbursements, and reasonable attorney's fees incurred in this action, and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 23, 2015

Respectfully submitted,
MESSNER REEVES LLP

By: /s/
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